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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

COMMUNITY ASSOCIATION FOR  
RESTORATION OF THE  
ENVIRONMENT, INC., a Washington  
Non-Profit Corporation  
*and*  
CENTER FOR FOOD SAFETY, INC.,  
a Washington D.C. Non-Profit  
Corporation

### **Plaintiffs.**

V.

No. 2:13-CV-3016-TOR  
AMENDED CONSENT  
DECREE

COW PALACE, LLC, a Washington Limited Liability Company, THE DOLSEN COMPANIES, a Washington Corporation, and THREE D PROPERTIES, a Washington Limited Liability Company.

### Defendants.

1           WHEREAS the Plaintiffs, the Community Association for Restoration of the  
2 Environment, Inc., and Center For Food Safety, Inc., initiated the above-captioned  
3 action by filing a Complaint on February 14, 2013, alleging that the Defendants named  
4 in this lawsuit (“Defendants” or “Cow Palace”) had violated the Resource Conservation  
5 and Recovery Act, 42 U.S.C. § 6901 *et seq.*, seeking injunctive and declaratory relief  
6 and attorneys and expert witness fees and costs. Defendants have denied the allegations  
7 contained in the Complaint;

9           WHEREAS the Court entered an Order on January 14, 2015 (ECF No. 320)  
10 finding Defendants in violation of the Resource Conservation and Recovery Act  
11 (“RCRA”), 42 U.S.C. § 6901 *et seq.*, by causing or contributing to an imminent and  
12 substantial endangerment to human health and the environment and by disposing of  
13 solid waste in such a manner as to constitute open dumping;

14           WHEREAS the Parties entered into a Consent Decree for the purpose of  
15 resolving all claims prior to trial. The Consent Decree was approved by the Court on  
16 May 19, 2015.

18           WHEREAS the Parties requested and worked with the United States  
19 Environmental Protection Agency (EPA) for several months to incorporate the terms of  
20 the original Consent Decree into the March 2013 Safe Drinking Water Act (SDWA)  
21 Administrative Order on Consent (AOC) between the EPA and Defendants. The Parties  
22 further requested that EPA assume oversight of the implementation of remedial actions  
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1 set forth in the original Consent Decree as incorporated into the new AOC. Despite  
2 these good faith efforts, EPA declined to assume oversight over any aspect of the  
3 original or this Amended Consent Decree;

4 WHEREAS after more than five years of activity under the Consent Decree, the  
5 Parties wish to formally restate, clarify, and amend the Consent Decree as stated below.

6 NOW, THEREFORE, upon the consent of the Parties, and upon consideration of  
7 the mutual promises contained herein, it is hereby ORDERED, ADJUDGED, and  
8 DECREED as follows:

9  
10 **GENERAL PROVISIONS**

11 1. This Court has jurisdiction over the Parties and the subject matter of this lawsuit  
12 pursuant to 42 U.S.C. § 6972(a) and 28 U.S.C. § 1331. Venue is proper in this Court  
13 pursuant to 42 U.S.C. § 6972(a) and 28 U.S.C. § 1391(b). This Court shall have  
14 continuing jurisdiction over this lawsuit for the purposes of interpretation, enforcement,  
15 and, if necessary, modification of this Amended Consent Decree.

16 2. The undersigned representative for each Party certifies that he/she is fully  
17 authorized by the Party whom he/she represents to enter into the terms and conditions of  
18 this Amended Consent Decree and to legally bind the Party to it.

19 3. This Amended Consent Decree is a settlement of disputed facts and law, without  
20 admission of any allegations, fact or law contained in the notices of intent to sue or  
21 Complaint. This Amended Consent Decree shall apply to and be binding upon the  
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1 Parties to this lawsuit and to their successors in interest, subject to the following. This  
2 provision is intended to require full compliance with this Amended Consent Decree so  
3 long as any portion of the Dairy Facility is used by any person or entity in the course of  
4 conducting Dairy Operations. For the purposes of this Agreement, the term "Dairy  
5 Facility" means the real estate depicted on the map attached hereto as Exhibit A, and  
6 any real estate added to the Dairy Facility for the purposes of conducting Dairy  
7 Operations after the date of this Amended Consent Decree. The term "Dairy  
8 Operations" includes all aspects of the commercial production of milk from cows,  
9 including but not limited to the related operations of compost, manure management,  
10 manure storage in lagoons and catch basins, the production and storage of silage and  
11 other animal feed materials, and the production of agricultural commodities which use  
12 any manure products from the Dairy Operations. However, nothing herein shall prevent  
13 Cow Palace from discontinuing any aspect of its Dairy Operations, or from transferring  
14 any part of the Dairy Facility to other owners for uses other than for Dairy Operations.

15 This Amended Consent Decree shall no longer apply to real property that is not being  
16 used for Dairy Operations; provided, however, that in the case of agricultural fields, the  
17 nitrogen application limitations shall not be lifted until such time as it can be  
18 demonstrated in a post-harvest test that there is an average of 25 ppm or less nitrate plus  
19 ammonium in the top two feet of the soil in such agricultural fields. Defendants, or any  
20 of their successors or assigns, may sell the Dairy Facility, or any part or parts of the real  
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1 property upon which the Dairy Facility or its Dairy Operations may be conducted,  
2 without Plaintiffs' consent and without approval of the Court; provided, however, that  
3 Defendants provide a copy of the Amended Consent Decree to the new owner prior to  
4 closing and provide written notice to Plaintiffs of the sale within 30 days of closing.

5 4. This Amended Consent Decree constitutes the final, complete, and exclusive  
6 agreement and understanding of the Parties with respect to the settlement embodied in  
7 this Amended Consent Decree and the subject matter of this lawsuit. There are no  
8 representations or understandings relating to the lawsuit or its settlement other than  
9 those expressly contained within this Amended Consent Decree. This Amended  
10 Consent Decree expressly supersedes, extinguishes, and replaces all prior stipulations  
11 and agreements between the parties, and expressly resolves, settles, and releases any and  
12 all claims that could have been raised by Plaintiffs prior to court approval of this  
13 Amended Consent Decree. Notwithstanding the foregoing, the Parties agree that in the  
14 event there is a disagreement as to the meaning or effect of any particular item in this  
15 document, the terms of the original Consent Decree may be utilized by either Party in an  
16 effort to illustrate the context or original intent of the Parties.

17 5. This Amended Consent Decree may not be modified in any material respect  
18 except by explicit written agreement by the Parties. The Parties may seek Court  
19 approval of significant or foundational amendments to this Agreement.  
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1       6. This Amended Consent Decree constitutes the full and complete settlement of all  
2 claims, rights, demands, and causes of any action of any kind for any known or  
3 unknown acts, omissions, or any manner of actual or potential violations, through the  
4 date of entry of the Amended Consent Decree, that Plaintiffs asserted or could have  
5 asserted against the Defendants in this lawsuit or under the original Consent Decree.  
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7       This covenant not to sue in no way releases Defendants from, and shall in no way limit  
8 Plaintiffs' ability to enforce, the terms of this Amended Consent Decree, or any future  
9 violations of law committed by Defendants.

10      7. Each Party acknowledges and represents that it has relied on the legal advice of  
11 its attorneys, all listed at the end of the Amended Consent Decree, who are the attorneys  
12 of its own choice, and that the terms of this Amended Consent Decree have been  
13 completely explained to each Party by its attorney(s), and that the terms are fully  
14 understood and voluntarily accepted.  
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16      8. In the event that any part of this Amended Consent Decree is deemed by a court  
17 of competent jurisdiction to be unlawful, void, or for any reason unenforceable, and if  
18 that part is severable from the remainder of the Amended Consent Decree without  
19 frustrating its essential purpose, then the remaining parts of the Amended Consent  
20 Decree shall remain valid, binding, and enforceable.  
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22      9. If for any reason the Court should decline to approve this Amended Consent  
23 Decree in the form presented, then the Parties agree to continue negotiations in good  
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1 faith in an attempt to cure the objection(s) raised by the Court to entry of this Amended  
2 Consent Decree.

3 10. This Amended Consent Decree may be signed in counterparts, and such  
4 counterpart signature page shall be given full force and effect.

5 11. The Dairy Facility is presently located at and near 1631 North Liberty Road,  
6 Granger, Washington, 98932 as further illustrated and described in Exhibit A attached  
7 hereto. The Dairy meets the federal and state law definitions of a large concentrated  
8 animal feeding operation or “CAFO.”

9 12. In operating the Dairy Facility, Defendants shall abide by this Amended Consent  
10 Decree and the ruling by Judge Rice in *CARE v. Cow Palace*, 80 F.Supp.3d 1180 (E.D.  
11 Wash. 2015). If any of the terms of this Amended Consent Decree are stricter than the  
12 Resource Conservation and Recovery Act (“RCRA”), then the terms of the Amended  
13 Consent Decree shall control. Notwithstanding the foregoing, the Parties agree that  
14 nothing in this Amended Consent Decree may be construed to obligate Defendants to  
15 violate any law, regulation, or the current or amended terms of the AOC. In the event of  
16 any perceived conflict, the Parties agree to submit the matter to the dispute resolution  
17 process described in paragraph 47.

18 13. Defendants shall update their NMP to reflect the requirements set forth herein and  
19 provide a copy to Plaintiffs for review and comment. Such updates shall make clear  
20 that Defendants have agreed to comply with the terms of this Amended Consent Decree,

which shall be attached thereto (as permitted by the reviewing authority), as shall any updated provisions regarding lagoon construction. Updates shall also identify all fields owned, leased or “controlled” by Defendants, to which Defendants apply manure. For the purposes of this Amended Consent Decree, Defendants shall be said to “control” fields to which manure is applied when the following three elements are satisfied: 1) manure is applied by Defendants’ employees or contractors using Defendants’ or Defendants’ contractor’s trucks; 2) when the amounts/rates of application are not dictated by the recipient; and 3) when Defendants are not compensated for such manure (e.g., reimbursement for fuel costs is not considered compensation). In all such instances, Defendants may only apply to such controlled fields when such fields can be demonstrated to have nitrate levels consistent with the thresholds set forth in paragraph 34, and when there is a demonstrated nutrient need for such field. Exports of manure to fields not “controlled” by Defendants shall be documented in a manner consistent with 40 CFR 122.42(e)(3) and shall include the most recent nutrient analysis from the source of the manure.

14. Defendants shall provide proposed updates to their NMP to Plaintiffs as set forth herein within sixty (60) days of entry of this Amended Consent Decree. Plaintiffs shall provide review and comment within forty-five (45) days thereafter, and the Parties shall work collaboratively to present a mutually agreeable NMP to the Conservation District in a reasonable time frame. Defendants shall thereafter periodically update their

1 NMP to specifically include reference to all fields owned or leased by Defendants, and  
2 to which they have applied or intend to apply manure products. Defendants shall not  
3 apply manure to any fields it owns or leases that are not listed in an approved NMP;  
4 provided, nothing shall prevent Defendants from submitting updates of their approved  
5 NMP and adding additional fields to it for the sole purpose of nutrient applications. A  
6 sample nutrient budget to be used for each field is further discussed herein and a form to  
7 be used for each field is attached hereto as Exhibit B. Prior to application of manure  
8 products to any fields newly owned, leased, or controlled by Defendants, Defendants  
9 shall conduct soil tests, obtain a recommendation, and adhere to the nitrate and  
10 phosphorus limitations set forth in paragraphs 34 and 37.

12 **OVERSIGHT OF AMENDED CONSENT DECREE IMPLEMENTATION**

13 15. All Groundwater Monitoring of wells installed pursuant to the Consent Decree  
14 shall be conducted and reported quarterly to Plaintiffs in a manner consistent with the  
15 2020 sampling and reporting protocols employed by Anchor QEA in its reports to  
16 CARE, subject to any future modifications to testing parameters as may be reasonably  
17 agreed by the parties. A representative and illustrative example of Anchor's 2020 Q1  
18 report to CARE is attached hereto as Exhibit C. Plaintiffs recognize that the sampling  
19 and reporting done under this Amended Consent Decree will not conform to the  
20 technical and QA/QC requirements imposed by EPA under the AOC, but that the  
21 general AOC sampling and reporting protocols will be followed. Further, Plaintiffs  
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1 agree that Defendants will report only annually on phosphorus, anions, cations, and  
2 alkalinity. No groundwater sampling or reporting is necessary for nitrites, ammonia, or  
3 TKN (total Kjeldahl nitrogen). However, Defendants agree to re-initiate ammonia  
4 testing if the quarterly nitrate concentration in any of the following wells with higher  
5 than 10ppm nitrate shows a 20% increase over the average nitrate concentration in that  
6 same well over the prior two corresponding quarters: : YVD wells 9, 10, 15, 19, and  
7 DC-04. As an illustration, if the average concentration in YVD well 10 shows 50ppm  
8 nitrate in Q3 2021 and 60ppm nitrate in Q3 2022, then the average concentration is  
9 55ppm. A nitrate concentration increase in Q3 2023 of more than 20% of that average,  
10 which would be an increase of 11ppm to 66ppm, would trigger a duty for ammonia  
11 testing in that well. In such an event, Defendants shall analyze the sample for ammonia  
12 in that well the following quarter. If a detection of ammonia occurs in the well at issue,  
13 then Defendants shall sample for ammonia at such well for each quarter until two  
14 consecutive quarters show “no detect” for ammonia, or as otherwise may be agreed by  
15 the parties. Further, any and all groundwater monitoring reports required to be  
16 produced to the EPA under the AOC shall be simultaneously provided to Plaintiffs’  
17 designee(s). The Parties disagree as to whether the Groundwater Monitoring reports  
18 that Defendants provide to the Plaintiffs from the monitoring wells installed under the  
19 Consent Decree must also be provided by Defendants directly to EPA. Plaintiffs  
20 reserve the right to bring this issue to the Court on motion for resolution.  
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**SITE INSPECTIONS, RECORD KEEPING, AND RECORD SHARING**

16. For the duration of this Amended Consent Decree, Plaintiffs shall be allowed to  
1 inspect the Dairy Facility, including any application fields owned, leased, or otherwise  
2 controlled by the Defendants, upon a minimum of 72 hours notice, not including  
3 weekends and holidays. Plaintiffs may designate up to four individuals on any such  
4 inspection; provided, however, that any such designated individuals shall possess  
5 reasonable scientific or professional credentials so as to provide a meaningful  
6 assessment of Defendants' progress under this Amended Consent Decree.

17. Inspections shall be conducted between the hours of 8:00 AM and 6:00 PM on  
1 weekdays, unless otherwise agreed to by the Parties. Plaintiffs' representatives shall be  
2 accompanied at all times by a representative of Defendants' choosing.

18. For the duration of this Amended Consent Decree, Defendants agree to make  
1 available to Plaintiffs, in electronic form and at no cost to Plaintiffs, copies of any  
2 reports, correspondence, sampling results, or other documents related to the Dairy  
3 Facility's Dairy Nutrient Management Plans, the AOC, and any documents generated as  
4 part of this Amended Consent Decree. Defendants may withhold from Plaintiffs  
5 documents that are legitimately protected by attorney-client privilege or the attorney  
6 work product doctrine. If Defendants assert that a document is immune from  
7 production to Plaintiffs, then Defendants shall provide to Plaintiffs a privilege log  
8 containing a description of the nature of the document(s) withheld, its author and  
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1 recipients, its date, the privilege or immunity asserted, and a description of the content  
2 of the document which, without revealing privileged or protected information, enables  
3 Plaintiffs to evaluate whether the privilege or immunity is being properly asserted.  
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#### **LAGOON LINING AND MAINTENANCE**

5 19. For the purposes of this Amended Consent Decree, the Parties agree that Cow  
6 Palace has thus far timely lined or abandoned its lagoons and catch basins in a manner  
7 generally consistent with the mutual understanding of the Parties under the original  
8 Consent Decree. With the exception of Settling Basins A and B, the parties concur that  
9 Cow Palace's lagoon lining obligations under the original Consent Decree have been  
10 satisfied. With respect to Settling Basins A and B, Cow Palace represents that such  
11 Basins were lined in accordance with EPA specifications prior to December 31, 2020.  
12 Plaintiffs have no reason to dispute this representation and the parties simply wait for  
13 Cow Palace's as-built completion report, which is due to be submitted to no later than  
14 February 28, 2021. If Plaintiffs have any questions or concerns about the lining of  
15 Settling Basins A and/or B, those shall be resolved informally with Cow Palace or  
16 brought to the attention of the Court no later than March 28, 2021.

17 20. The Parties agree that the completion of Cow Palace's lagoon lining obligations  
18 eliminates the need for any further observation or monitoring of lagoon lining activities  
19 at Cow Palace, except insofar as Plaintiffs may wish to confirm any aspects of the  
20 completion of lining of Settling Basins A and B.  
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# GROUNDWATER MONITORING

21. Defendants have joined with George DeRuyter & Son Dairy, LLC, and D&A  
Dairy, LLC, Henry Bosma Dairy, a Washington Proprietorship, and Liberty Dairy,  
LLC, a Washington Limited Liability Company, to fund the installation of a grid of 14  
new monitoring wells, 12 of which were installed and finished as of early 2017 and one  
of which was completed in December 2017. The first samples of the 12 installed wells  
were taken in March 2017 at the same time as the first quarter 2017 AOC sampling. The  
13th well was installed and sampled in time for the fourth quarter 2017 AOC sampling.  
The 14th well was installed in time for first quarter 2018 AOC sampling and will be  
included in the First Quarter 2018 report and thereafter. The locations of the 14 wells  
are depicted in the map attached hereto as Exhibit D. All wells on Exhibit D other than  
wells YVD-19-32 were installed pursuant to the AOC. Defendants shall sample the  
Consent Decree monitoring wells at the same time as sampling occurs under the AOC at  
least once per quarter during the term of this Amended Consent Decree. To the extent  
the AOC terminates prior to the termination of the Clean Water Drinking Project created  
in the original Consent Decree, Defendants shall nevertheless continue to test at least  
YVD wells 9, 10, 15, 19, and DC-04 until such Clean Water Drinking Project  
terminates.

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1                   **CENTRIFUGE MANURE SEPARATOR OR EQUIVALENT OR**  
2                   **BETTER NUTRIENT REDUCTION TECHNOLOGY**

3       22. As part of their commitment to reducing the nutrients applied to their farming  
4       operations, and pursuant to their obligations under the original Consent Decree,  
5       Defendants installed and operated a centrifuge manure separator. The centrifuge  
6       manure separator has not performed to Defendant's expectations and they have replaced  
7       it with an improved nutrient recovery system that utilizes polymers, screen separation  
8       and mechanical dewatering. Defendants shall continue to consider and assess other  
9       technologies to reduce nitrogen and phosphorus content of their manure containment  
10      and treatment systems. Defendants may at any time replace their nutrient recovery  
11      system with any new system or technology that they reasonably believe to be equal or  
12      superior to the performance of the then-existing system, following disclosure and  
13      discussion with Plaintiffs.

14     23. Unless otherwise agreed by Plaintiffs, Defendants' nutrient recovery system shall  
15      operate "in-line" with the Dairy's existing manure separator system. "In-line" means  
16      that any manure passing through the primary separator shall subsequently be subjected  
17      to the nutrient recovery system (or its replacement), removing additional solids from the  
18      liquid manure. This procedure shall remain in place except for brief periods in which  
19      the system may be undergoing repair or maintenance, and unless and until the system is  
20      replaced by similarly efficient or improved equipment or technology.

1 24. Defendants shall provide Plaintiffs with data showing the level of nitrogen and  
2 phosphorus in the liquid manure that is sent through the nutrient recovery systems both  
3 prior to and following the nutrient recovery systems. Such information shall be  
4 recorded twice per year, once in May and once in November, during the term of this  
5 Amended Consent Decree, and provided to Plaintiffs annually and/or upon request. The  
6 solids, prior to intended application to fields, shall be sampled to determine agronomic  
7 application rates pursuant to other parts of the Amended Consent Decree.

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9 **UNDERGROUND CONVEYANCE INSPECTION**

10 25. Defendants have completed inspection of all underground conveyance systems  
11 (piping, joints, manholes, inlet structures and discharge structures). Inspection included  
12 pressure testing of all transmission lines and/or video inspection and documentation of  
13 all underground structures. Results of all such inspections were provided to Plaintiffs'  
14 designated representative(s) in 2016. This portion of the original Consent Decree has  
15 been completed. As a continuing obligation, Defendants shall repair any leaks in the  
16 ordinary course and shall ensure that all liquid manure is directed to lagoons.

17

18 **COW PENS**

19 26. Defendants have made modifications to their aprons and feed lanes (consistent  
20 with an oral agreement between the Parties) and water troughs within all the cow pens at  
21 the Dairy Facility, with appropriate piping or diversion that redirects all collected  
22 wastewater to the Dairy Facility's lagoon system. Defendants are now in compliance

1 with all obligations under the original Consent Decree to pour concrete or otherwise  
2 reconfigure or modify their pens.

3 27. Defendants have implemented a protocol of regularly inspecting for and re-  
4 grading all low-lying or wet spots within all the cow pens at the Dairy. Upon  
5 identification of any ponding of water Defendants shall promptly take reasonable steps  
6 to alleviate such ponding, including, as may be appropriate, vacuuming and removing  
7 any ponded water from the pens. The re-grading process shall slope any low-lying or  
8 wet spots such that they no longer collect, or have the likelihood to collect, runoff from  
9 the cow pens. Such inspection and re-grade shall occur at least monthly as weather  
10 conditions allow, and as practical in months where weather conditions make re-grading  
11 problematic.

12 28. Manure shall be scraped in the cow pens at least weekly and any accumulated  
13 piles removed at least monthly from March through October; provided, however, that  
14 Defendants shall be excused from scraping pens during those weeks where persistent  
15 weather events and/or ground saturation make it impossible to operate machinery in the  
16 pens without getting stuck or potentially causing harm to the machinery. Defendants  
17 shall grade each cow pen before November 30 of each year so that any runoff from piled  
18 manure is routed to the alleys or other such drains in order that such runoff be conveyed  
19 directly to the lagoon system. Defendants shall keep records, on the forms attached as  
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Exhibit E hereto, documenting all actions required by this subsection and provide them to Plaintiffs annually and/or upon request.

## **SILAGE AREA**

29. Defendants' Silage Areas are located entirely on an impervious surface and have been since the original Consent Decree was entered. Defendants shall continue to maintain their Silage Area on an impervious surface for as long as this Amended Consent Decree is in place. For purposes of this section, the storage of natural products (hay, triticale, corn) that are expected to be incorporated into silage are not considered located in the Silage Area, but rather are stored in synthetic AgBags in an area adjacent to the Silage Area. Defendants may store corn silage in AgBags so long as the dry matter content of such corn silage is maintained at 30% or higher. So long as the natural products are stored in synthetic AgBags, or containers of similar construction that prevent regular contact with soils, such natural products need not be maintained on an impervious surface. AgBags shall be positioned so that if there is any leachate it will be directed to an asphalt apron where it shall be collected and conveyed to the lagoons. Asphalt aprons shall be installed in a manner that harmonizes with the lagoon installation schedule.

## **COMPOST AREA**

30. Defendants have completed the reconfiguration of their compost facility in a manner consistent with the original Consent Decree. All compost facilities are now

1 sloped, graded and compacted in a manner designed to prevent pooling, and with  
2 leachate flowing to a collection system that directs any runoff to the Dairy's lagoon  
3 system.

4 31. Should Cow Palace seek to use other areas for compost, Cow Palace shall notify  
5 Plaintiffs in writing and the Parties shall work in good faith to ensure that any additional  
6 compost areas meet at least the minimum requirements set forth in paragraph 32.

7 32. For any such additional compost areas used henceforth at the Dairy Facility,  
8 Defendants shall (1) re-grade, as necessary, the area to a slope of at least 2% and (2)  
9 compact, as may be necessary, the area to 95% of standard proctor compaction to reduce  
10 permeability and ensure a permeability value of no less than  $1 \times 10^{-4}$  cm/sec. The  
11 Parties recognize that the permeability value of  $1 \times 10^{-4}$  cm/sec is a negotiated value,  
12 and Plaintiffs' acceptance of this value for the purposes of settlement may not be  
13 construed as an admission that such value will prevent leaching. The Parties also  
14 recognize that compaction to 95% of standard proctor may well result in a permeability  
15 value significantly greater than  $1 \times 10^{-4}$  cm/sec.

16 33. Upon entry of this Amended Consent Decree, all composted manure shall be fully  
17 cycled annually such that no compost shall remain at the facility for longer than one  
18 calendar year. This requirement is subject to reasonable extensions of up to 90 days in  
19 the event precipitation shortens the typical compost season.

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**MANURE APPLICATION & FIELD MANAGEMENT**

34. Defendants shall ensure that all future applications of manure to agricultural fields owned, leased or controlled by the Defendants are based upon the nutrient management budget as described in paragraph 14. The nutrient budget requires Defendants to determine that nutrient application rates are based on residual soil nitrate and phosphorus levels, ensuring that manure is applied in agronomic quantities and rates as defined herein. For all fields owned, leased, or controlled by Defendants, the post-harvest sampling contemplated under this Amended Consent Decree shall be conducted consistent with the post-harvest sampling protocols that have been observed since the original Consent Decree was entered. Future applications of manure products to agricultural fields owned, leased, or controlled by Defendants shall be made at agronomic rates, and shall be supported by a recommendation by a qualified agronomist as well as post-harvest soil tests from the top two feet of fields demonstrating compliance with the nitrogen and phosphorous thresholds set forth in the following paragraphs. All deliveries of liquid or solid manure, and all sales of separator solids, straw manure and compost (except for uses for fields owned, leased, or otherwise controlled by Defendants), shall be considered exports that are not subject to the requirements of this Amended Consent Decree, provided that Defendants shall maintain records of such exports that are consistent with 40 CFR 122.42(e)(3) and paragraph 13

1 herein. In addition to the requirement to always apply at agronomic rates and consistent  
2 with the nutrient budget, Defendants shall comply with the following restrictions:

3       a. To the extent any field owned, leased, or otherwise controlled by the  
4 Defendants has been shown, post-harvest 2019, to have an average of greater than  
5 25 ppm residual nitrate plus ammonium in the top two feet of the soil column, as  
6 determined by the fall post-harvest and spring pre-plant sampling, Defendants  
7 shall not apply to such field in 2020 and thereafter until and unless the average is  
8 shown by subsequent test to be below 25 ppm. Thereafter Defendants may apply  
9 to agronomic rates and in accordance with the nutrient budget.

10      35. Any fields subsequently purchased, leased, or otherwise controlled by  
11 Defendants, shall be subject to the limitations set forth in paragraph 34. In addition to  
12 the above limitations, if it appears that additional nutrients are required during the  
13 spring/summer growing season to any crop, Defendants shall first take tissue samples to  
14 determine whether additional nutrients may be applied agronomically.

15      36. Furthermore, in the event any given field fails to meet the post-harvest nitrate  
16 limit for any field in two consecutive years, then the nutrient budget shall be modified in  
17 a manner designed to consistently reach the post-harvest limit. Plaintiffs shall be  
18 consulted on any such modifications. If the Parties cannot agree to an acceptable  
19 modification prior to March 31st of the year following the second non-compliant test,  
20 then the matter shall be submitted to the Court for resolution.

1 37. All of the fields owned, leased or controlled by Defendants shall be subject to the  
2 following phosphorus requirements, with the goal of getting phosphorus levels in the  
3 top two feet of soil to agronomic levels at or below 40 ppm:

- 4 a. Based on the average phosphorus levels measured in the 1- and 2- foot  
5 intervals during the fall, post-harvest sampling, Defendants shall not  
6 exceed the phosphorus application restrictions defined in the table below:  
7

Fall Average Available P in Upper 2 feet (mg Olsen P/kg)	Total annual application based on P (Crop years 2020+)
< 40 mg ppm	Control for N
41-100 ppm	90% of crop extraction
101-180 ppm	66.6% of crop extraction
>181 ppm	No application

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9 38. It is Plaintiffs' position that the limits for application set forth herein are a  
10 compromise intended to achieve significant reduction of ongoing impacts but may not  
11 represent the scientific standards that may be needed to provide full, long-term  
12 environmental protection. Plaintiffs have agreed to limitations set forth herein, in  
13 conjunction with the Clean Drinking Water Project, in order to provide immediate relief  
14 to potentially impacted residents.

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16 39. Defendants shall make available to Plaintiffs copies of all manure management  
17 documents created by the Dairy Facility, including but not limited to, field application  
18 summaries, export records, regularly-maintained moisture sensor data, soil sampling,  
19 manure sampling, handwritten field application logbooks, crop yield data, tissue  
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1 sampling data, nutrient budgets, and nutrient planning and application documents  
2 generated by Defendants.

3 40. Notwithstanding the foregoing, the Defendants contend that there may be extreme  
4 circumstances that warrant an Emergency Winter Land Application so as to ensure that  
5 lagoons do not breach. In such event, Defendants shall provide written notice to  
6 Plaintiffs prior to such application. In the event such Emergency Winter Land  
7 Application occurs at such hours that prior notice is not possible, then notice shall be  
8 provided immediately following such application. Such notification shall include the  
9 anticipated date, location, and volume of such Emergency Winter Land Application and  
10 assurance that all reasonable steps have been taken to ensure that discharges off the field  
11 do not occur during thawing or precipitation events until the manure is properly  
12 incorporated into the soil. In the event of such application, the Parties shall confer and  
13 discuss whether the need for an Emergency Winter Land Application requires any  
14 modification of the storage capacities called for in the approved Lagoon Plan. Given  
15 the more frequent heavy precipitation events of the past few years, and their expected  
16 continued occurrence, the present 25-year/24-hour storm event used for storage capacity  
17 calculation shall be revised upward.

18 **PROVISION OF BOTTLED WATER OR REVERSE OSMOSIS SYSTEM**

19 41. Defendants agreed under the original Consent Decree to provide \$2,000 per  
20 month to support a complementary Clean Drinking Water Project. Such obligations  
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were intended to supplant the duties assumed by Defendants on February 6, 2015, under the Stipulation reached by the Parties (ECF No. 336). Such Stipulation required Defendants to provide bottled water service to persons in a defined area near the Dairy Facility. Defendants have complied in all respects with both obligations, resulting in payments by Defendants in the amount of \$43,117.03. The Clean Drinking Water Project has been in place since at least May of 2015 and shall remain in place until terminated pursuant to paragraph 45(C) below. However, given Defendants' past payment for bottled water service, Defendants shall have a credit in the amount of \$43,117.03 (the "Overpayment Credit"). Defendants may temporarily suspend payments to the Clean Drinking Water Project, with the \$2,000 per month otherwise due being deducted from the Overpayment Credit. After a period of 21 months, the next month's payment due from Defendants shall be \$882.97 (\$2,000 minus the remaining \$1,117.03 in Overpayment Credit). Thereafter, Defendants shall resume the \$2,000 monthly payments, which shall remain in place until termination pursuant to paragraph 45(C) below. The parties agree that Cow Palace's last \$2,000 payment was December of 2019, meaning they are relieved of further payments through September 30, 2021. On October 1<sup>st</sup> of 2021 Cow Palace shall pay \$882.97, and shall resume \$2,000 monthly payments on the first of each month thereafter until the Clean Water Provision has been terminated. Provided, however: If the Amended Consent Decree with respect to the water payments terminates prior to November 1, 2021, Plaintiffs shall reimburse

1 Defendants in an amount equal to the remaining Overpayment Credit. The Clean  
2 Drinking Water Project shall be solely responsible for administering the funds. The  
3 Clean Drinking Water Project provides bottled water and/or reverse osmosis systems to  
4 residents whose residential water has tested at or near 10 ppm nitrate.

5 42. As long as the funds from Defendants or any other sources can be shown to have  
6 fulfilled the purpose of the Project, then the Clean Drinking Water Project may utilize  
7 any excess funds to supply clean drinking water to such eligible persons or residences in  
8 the Granger/Sunnyside area believed to be impacted by contaminated groundwater.  
9 Except as provided in paragraph 41 above, in no event may any excess funds be  
10 refunded to Defendants. Plaintiffs shall provide a report by March 31, 2021 for funds  
11 used through 2020 for the Clean Drinking Water Project. Such report shall include the  
12 number of homes reached, the number of homes provided with alternative drinking  
13 water, and the funds expended. A list of the homes that the Dairies must maintain has  
14 been agreed upon and is attached as Exhibit F.

15 43. Defendants' obligation to contribute to the Clean Drinking Water Project shall  
16 terminate only as provided below in paragraph 45(C).

17 **PAYMENT OF ATTORNEYS' FEES, EXPERT WITNESS FEES, AND COSTS**

18 44. Plaintiffs' attorneys' fees, expert fees, and costs incurred in association with the  
19 underlying lawsuit have been paid consistent with the earlier Court Order. ECF No. 305  
20 (Order) and ECF No. 309 (stipulation on fees). The Parties disagree as to the amount of  
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any additional fees that may be owed to Plaintiffs since January of 2016. The original consent decree provided that Defendants would pay Plaintiffs an amount not to exceed \$9,000 per year for monitoring costs. Plaintiffs have provided records to Defendants indicating the nature of work their lawyers and experts have performed from 2016-2019 and contend that such additional work was necessitated by the EPA's decision not to participate in the oversight of the Consent Decree and that Plaintiffs should be compensated for that additional work. Further, Plaintiffs contend that they are entitled to recover the additional fees they have incurred in the course of negotiating and drafting this Amended Consent Decree. Plaintiffs contend that the total costs and fees associated with such work and payable by Defendants through November 30, 2020 are \$52,000.00. Defendants contend that the Plaintiffs agreed to cap their fees at \$9,000 per year through 2017 and at \$4,000 in 2018 and 2019 and that the additional fees requested are not reasonable. In order to resolve outstanding claims fees and costs for 2016 through the date of entry of this Amended Consent Decree, Defendants agree to pay to Plaintiffs a total of \$48,000.00 over the course of six monthly installments in the amount of \$8,000 each. The first installment payment is due thirty days following the Court's entry of this Amended Consent decree. Separately, Defendants shall pay Plaintiffs up to a total of \$3,000 per year in attorneys' fees and any other expenses (travel costs, expert fees, etc.) for 2021 and again for 2022, for Plaintiffs' reasonable and necessary oversight of Cow Palace's performance of its duties herein. Plaintiffs

1 shall submit their billing and expense records to Cow Palace no later than by February 1  
2 of 2022 and 2023 respectively, and such sums shall be paid within 30 days. Plaintiffs  
3 reserve the right to seek additional fees if Defendants unreasonably fail to provide the  
4 documents or information required herein, or materially breach any of the terms of this  
5 Amended Consent Decree in a manner that reasonably requires additional oversight by  
6 Plaintiffs. Cow Palace similarly reserves the right to dispute the reasonableness or  
7 necessity of any such claimed fees or expenses.

9 **TERMINATION**

10 45. This Amended Consent Decree shall terminate as follows:

11 A. With the exception of the Clean Drinking Water Project and phosphorus,  
12 this Amended Consent Decree shall terminate no later than March 1, 2021, provided  
13 that Defendants have certified to EPA that they've completed the lining of Settling  
14 Basins A and B consistent with the terms of paragraph 19, above, and subject to  
15 Defendants' continued compliance from the date of entry of this Amended Consent  
16 Decree with the material terms herein. Compliance with material terms means that  
17 Defendants will have, at a minimum:

18 1. Provided reasonable and timely access to Plaintiffs' representatives as  
19 contemplated in the Amended Consent Decree;

20 2. Substantially and in good-faith complied with all record-keeping, notice  
21 and document production obligations;

1       3.     Completed the lining of the final lagoons as set forth herein, and  
2 maintained and repaired the lagoons in a manner consistent with industry standards;

3       4.     Maintained, monitored and reported information from the new monitoring  
4 wells in a manner consistent with their obligations herein;

5       5.     Managed the nutrient recovery system, compost, pens, underground  
6 conveyances, silage, and other dairy operations in a manner consistent with the  
7 obligations herein;

8       6.     Substantially complied with their obligations under the Application Field  
9 Management Plans and Irrigation Water Management Plans, and substantially complied  
10 with their duty to only apply at agronomic rates, within the nutrient budget, and  
11 exclusively as allowed under this Amended Consent Decree; and

12       7.     Consistently achieved post-harvest limits of 25 ppm nitrate average,  
13 including ammonium, in the top two feet, according to the time frames set forth in this  
14 Amended Consent Decree; and provided that all obligations as they relate to nitrates  
15 shall continue to be honored and observed under the Dairy's nutrient management plan.

16       B.     This Amended Consent Decree shall terminate with respect to obligations  
17 relating to phosphorus only when at least 50% of Defendants' fields have tested post-  
18 harvest at or less than 100 ppm average in the top two feet of the fields, and with  
19 demonstrable downward trends in all other fields.

C. With respect to the Clean Drinking Water Project for these Defendants, this Amended Consent Decree shall terminate only when the five (5) wells shown on the map attached hereto as Exhibit D (including YVD wells 9,10,15,19, and DC-04) test lower than 10 ppm nitrate for 8 consecutive quarters; or when the collection of data from all wells shows data that, in conjunction with other available information and data points, a reasonable person would conclude that the Dairy Facility is no longer causing or contributing nitrate to groundwater in excess of the maximum contaminant level of 10 ppm. To the extent the Parties do not agree, the matter shall be submitted to the dispute resolution process, and if need be to the Court for hearing and resolution.

## INTEGRATION

46. This Amended Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement reflected in this Amended Consent Decree, and supersedes all prior agreements and understandings among the Parties related to the subject matter in the original Consent Decree (except as otherwise specifically referenced herein).

## **DISPUTE RESOLUTION**

47. In the event of any dispute regarding implementation, interpretation, or compliance with this Amended Consent Decree, the Parties shall first attempt to informally resolve that dispute through meetings of the Parties. Any Party may initiate the informal dispute resolution process by serving written notice of a request for dispute

1 resolution on the other Party. If no resolution is reached within thirty (30) calendar days  
2 of the date that the notice of a request for dispute resolution is served, then the Parties  
3 may resolve the dispute by filing motions with the Court.

## **EFFECTIVE DATE**

## FINAL JUDGMENT

10       49. Upon approval and entry of this Amended Consent Decree by the Court, this  
11      Amended Consent Decree shall constitute a final, non-appealable judgment of the Court  
12      under Rules 54 and 58 of the Federal Rules of Civil Procedure.

## NOTICES

1 For Plaintiffs CARE and CFS:

2 Charles M. Tebbutt and B. Parker Jones, Law Offices of Charles M. Tebbutt (e-  
3 mail already provided) attention: Yakima Valley Dairies Consent Decree.

4 For Defendants:

5 Brendan Monahan, Stokes Lawrence Velikanje Moore & Shore (e-mail already  
6 provided), attention: Yakima Valley Dairies Consent Decree.

7 The Parties have exchanged designated email addresses to be used in accordance with  
8 this Section. Any Party may change either the notice recipient or the address for  
9 providing notices to it by serving the other Parties with a notice setting forth such new  
10 notice recipient or address.

11  
12 WE HEREBY CONSENT to the Entry of this Amended Consent Decree.

13 COMMUNITY ASSOCIATION FOR  
14 RESTORATION OF THE  
15 ENVIRONMENT, INC.

16 By: \_\_\_\_\_  
17 Helen Reddout, President

CENTER FOR FOOD SAFETY, INC.

By: \_\_\_\_\_  
George Kimbrell, Senior Attorney

18 *Plaintiffs*; and

19 COW PALACE, LLC

20 By: \_\_\_\_\_  
21 Adam P. Dolsen, Manager

THE DOLSEN COMPANIES

By: \_\_\_\_\_  
Adam P. Dolsen, President

22 THREE D PROPERTIES, LLC

1 For Plaintiffs CARE and CFS:

2 Charles M. Tebbutt and B. Parker Jones, Law Offices of Charles M. Tebbutt (e-  
3 mail already provided) attention: Yakima Valley Dairies Consent Decree.

4 For Defendants:

5 ~~David M. Manahan, Stokes Lawrence Velikanje Moore & Shore~~ (e-mail already  
6 provided), attention: Yakima Valley Dairies Consent Decree.

7 The Parties have exchanged designated email addresses to be used in accordance with  
8 this Section. Any Party may change either the notice recipient or the address for  
9 providing notices to it by serving the other Parties with a notice setting forth such new  
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11

12 WE HEREBY CONSENT to the Entry of this Amended Consent Decree.

13 COMMUNITY ASSOCIATION FOR CENTER FOR FOOD SAFETY, INC.  
14 RESTORATION OF THE  
15 ENVIRONMENT, INC.

16 By: Helen Reddout By: George Kimbrell  
17 Helen Reddout, President George Kimbrell, Senior Attorney  
*10/1/2010*

18 Plaintiffs; and

19 COW PALACE, LLC

THE DOLSEN COMPANIES

20 By: Adam P. Dolsen  
21 Adam P. Dolsen, Manager

By: Adam P. Dolsen  
Adam P. Dolsen, President

22 THREE D PROPERTIES, LLC

23

24

1 By:   
2 Adam P. Dolsen, Manager

3  
4  
5 **Defendants.**

6 Respectfully submitted this \_\_\_th day of January, 2021 and effective on the date  
7 entered by the Court.

8  
9  
10 s/ Brad J. Moore  
11 BRAD J. MOORE, WSBA #21802  
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Safety

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TOBY J. MARSHALL, WSBA # 32726  
BETH E. TERRELL, WSBA # 26759

1 By: Adam P. Dolsen, Manager

2 ***Defendants.***

3  
4  
5  
6 Respectfully submitted this 28th day of January, 2021 and effective on the  
date entered by the Court.

7  
8 s/ Brad J. Moore  
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16  
17  
18 *Counsel for Defendants*

19 IT IS SO ORDERED:

20 DATED February 18, 2021



A handwritten signature in blue ink that reads "Thomas O. Rice".

21  
22 THOMAS O. RICE  
United States District Judge  
23  
24